RE LIM YEW TEOK, DECEASED; BRITISH MALAYA TRUSTEE AND EXECUTOR CO., LTD. AND ANOTHER v. CHNG PHEE LAM AND THREE OTHERS.

[Orig. Civ. Juris. (Brown, J.) March 15, 1948]
[Singapore — O. S. No. 61 of 1947]

Will — Contruction — Next of kin in accordance with the Statutes of Distribution — Vested or contingent legacy.

In this Summons two questions were raised upon the construction of the Will of Lim Yew Teok deceased. The first question was whether upon the true construction of the Will the share of income enjoyed therein by Chng Kim Soh passed upon her death to (1) her father, the 1st defendant or (2) her brothers or (3) falls into the residue or (4) falls to be divided as an intestacy. Clause 6 of the Will provided that in the event of the death of the residuary legatee, Lim Chye Hin her share was to be paid to the next of kin of such legatee in accordance with the Statutes of Distribution "and in the event of the death of any one or more of such next of kin as aforesaid then to the next of kin of such next of kin in accordance with the Statutes of Distribution".

Held, that according to the true construction of the Will, the share of income enjoyed by Chng Kim Soh passed to her next of kin according to the Statutes of Distribution, that is her father.

The second question raised was whether the plaintiffs as trustees of the Will ought to satisfy the legacy of $10,000/- bequeathed by Clause 3 of the Will to Chng Kim Soh by paying the said sum to the legal personal representative of Chng Kim Soh with interest. Clause 3 provides as follows: "I give and bequeath to each of the children of my daughter the said Lim Chye Hin the sum of $10,000/- to be paid to him or her on attaining the age of 21 years but without interest in the meantime".

Held, that the legacy was a vested one and that the trustees should pay the legacy with interest from the 15th of February 1941, deferring payment of the interest covered by the Moratorium period.

Cases referred to:—

(1) *Re Lim Yew Teok, Deceased,* (1937) S.S.L.R. 243, (1937) M.L.J. 233.
(2) *Withy v. Mangles,* 49 E.R. 377.
(3) *Francis v. Francis,* (1905) 2 Ch. 295.
(4) *Love v. Love,* 7 L.R. Ir. 309.

ORIGINATING SUMMONS.

W. Munro for the Trustees.

N. A. Mallal for the 1st Defendant.

C. Da Silva for the 2nd Defendant.

S. C. Goho for the 3rd Defendant.

R. H. Green (4th Defendant) in person.

Brown, J.: — The first question which I am asked to determine is whether upon the true construction of the Will the share of income enjoyed therein by Chng Kim Soh passed upon her death to (1) her father, the 1st defendant, or (2) her brothers, or (3) falls into residue or (4) falls to be divided as on an intestacy.

Chng Kim Soh was the daughter of the residuary legatee Lim Chye Inn. By a provision contained in clause 6 of the Will, in the event of the death of such legatee her share was to be paid to the next of kin of such legatee in accordance with the statutes of distribution. Upon the death of Lim Chye Inn it was decided by Terrell J. in *O.S. 56 of 1937*[1] that her share passed to her four children (of whom Chng Kim Soh was one), to the exclusion of Lim Chye Inn's husband. Thus Chng Kim Soh became entitled as one of the next of kin of the legatee Lim Chye Inn. The next provision in clause 6 of the Will reads as follows:—

> And in the event of the death of any one or more of such next of kin as aforesaid then to the next of kin of such next of kin in accordance with the statutes of distribution.

Chng Kim Soh died on the 18th October 1941, married but without issue, and according to the above-quoted provision of Clause 6 her share passes to her next of kin in accordance with the statutes of distribution. Her husband being excluded, her next of kin who would be first entitled according to the statutes of distribution is her father, the 1st defendant. Her brothers would only have become entitled under the statutes of distribution if her father had predeceased her. But the father has re-married and is living apart from his children by Lim Chye Inn. By his present wife he has four children. And it appears probable that if he is held to be the person entitled under the will his second family may benefit to the exclusion of the descendants of Lim Chye Inn. Mr. Da Silva, representing the brothers of Chng Kim Soh, contends that this would be contrary to the whole purport of the will, which must of course be read as a whole.

I agree that such a result would be contrary to what appears to have been the testator's intention. But I have to look at the circumstances which existed at the time when the testator made his will, and where the terms are unambiguous I must give effect to them, even though this may lead to an inconvenient result owing to the testator not having foreseen all the consequences of his disposition. For this reason I consider that I must reject any argument which is based on the 1st defendant's altered circumstances.

Mr. Da Silva then argued that the term "next of kin in accordance with the statutes of distribution" is a loose expression upon which no reliance should be

placed. In support of this contention he cited *Withy v. Mangles*[2]. That was a case of a marriage settlement, in which there was an ultimate limitation of personal property "to such person or persons as at the time of the death of E. M. should be her next of kin." The two points of distinction between that case and the present are, firstly, that that was a case of a marriage settlement, and secondly, that in that case the words 'next of kin' were used simpliciter whereas in the case of this Will they are qualified by the further words "in accordance with the statutes of distribution." It seems to me that these two distinctions appear clearly from the judgment of the Master of the Rolls at page 381, where he says :—

> The construction given to the term "next of kin", with reference to the statute of Car. 2 shews that the next of kin entitled to administration and distribution are not to be deemed to be next of kin for all purposes; and I apprehend that in all other cases the term "next or nearest of kin" must be construed according to their simple and obvious meaning, or according to the legal construction of the whole instrument in which they occur..... If, in this case, the words of the limitation had, in any way, referred to the law of distribution, there would have been a guide to the interpretation; but there is no such reference.

In Clause 6 of this Will it is expressly stated that the person entitled is "the next of kin in accordance with the statutes of distribution." Therefore it seems to me that the argument founded on *Withy v. Mangles*[2] fails.

But there is a third argument, which I would put in this way: notwithstanding the express words which require the income to pass to "the next of kin in accordance with the statutes of distribution", are there not terms and expressions used in this Will which impliedly qualify those express words by restricting "the next of kin in accordance with the statutes of distribution" to those next of kin who belong to the 'stirps'? I agree with the view taken by Terrell J. that clause 8 makes clear the testator's intention that the same persons who would enjoy the income under clause 6 would be entitled to the corpus under clause 8. Those persons are "such of my residuary legatees as shall be living at the date of distribution and the next of kin of such of my residuary legatees and their descendants per stirpes as shall have died prior to the date of distribution." And if, under Clause 6, the father takes the income as being "the next of kin in accordance with the statutes of distribution", he will also (if he is alive at the date of distribution) take the corpus under Clause 8 as being the next of kin of Chng Kim Soh, who was a descendant per stirpes of the residuary legatee, Lim Chye Inn. I can see nothing in Clause 8 which is irreconciliable with the express words in Clause 6. That the testator never contemplated the circumstances which have arisen may well be true. But as clause 6 of the Will directs that upon the death of Chng Kim Soh the income is to be paid "in accordance with the statutes of distribution", it seems to me that to pay the income to any person or persons other than the father would be doing violence to a clear and unambiguous direction. In coming to this conclusion I have given consideration to the further words in Clause 6, that "only in the event of complete failure of the stirps of any one or more of my residuary legatees shall the shares of such original residuary legatee or legatees fall into residue." But it does not seem to me that those words would justify me in qualifying the express words whereby the income is to be paid Chng Kim Soh's next of kin "in accordance with the statutes of distribution." The "stirps" referred to is to my mind clearly the descendants by blood of Lim Chye Inn. There has been no failure of the 'stirps' because three of Lim Chye Inn's sons (the brothers of Chng Soh Kim) are still alive. Therefore there can be no question of Chng Soh Kim's share falling into residue. Nor can there be any question of an intestacy, because there are several persons who are qualified as Chng Kim Soh's next of kin. But, out of the persons so qualified, the selection of the person entitled is determined by the words "in accordance with the statutes of distribution."

In my opinion, therefore, the answer to the first question is that the share of income enjoyed in the Will by Chng Kim Soh passed upon her death to her father, the 1st defendant. I may add that it seems to me that if the father should die before the date of distribution further questions will arise regarding the distribution of the corpus.

The second question which I have to determine is whether the plaintiffs as trustees of the Will ought to satisfy the legacy of $10,000 bequeathed by clause 3 to Chng Kim Soh by paying the said sum to the legal personal representative of Chng Kim Soh with interest at 6% per annum from 14th January 1941, excluding the period covered by the Moratorium, in respect of which period the calculation and payment of interest must await the enactment of appropriate legislation.

The material words in Clause 3 are as follows :—

> I give and bequeath to each of the children of my daughter the said Lim Chye Inn the sum of $10,000/- to be paid to him or her on attaining the age of 21 years but without interest in the meantime.....

Two questions arise :—

(a) Do those words give a vested interest, or is the legacy contingent upon the attainment of the age of 21?

(b) If it is contingent, is there any evidence that Chng Kim Soh in fact attained the age of 21 so as to entitle the trustees to pay the legacy.

Dealing with the second question first, I agree with Mr. Goho that there is no sufficient evidence before me that Chng Kim Soh had attained the age of 21 when she died; and if my answer to the first question made it necessary I should have to send the case to the Registrar for investigation.

In support of the proposition that the legacy is contingent Mr. Goho referred to *Francis v. Francis*[3]. In that case there was a devise of real estate to a devisee "when she shall attain the age of twenty-five years." Swinfen-Eady J. quoted a passage from the judgment of *Love v. Love*[4] in which the Vice Chancellor said :—

> There is no difference, in my opinion, between the words 'on his attaining' and 'when' or 'if' he shall attain twenty-three, or 'at twenty-three'. All equally import contingency.....

But I can see nothing contingent in the words contained in Clause 3 of this Will. The testator gives and bequeathes the sum of $10,000 with the direction that payment is to be made on attaining 21. Mr. Green argued that the further direction "without interest in the meantime" means without attaining any vested interest at all. But I do not think that that is the correct construction. I have no doubt that the legacy vested and was not contingent. The testator is giving a sum of $10,000 to each of the persons concerned, with directions that it is not to be paid until he or she attains the age of 21 and that he or she is to receive no interest on the money in the meantime.

My answer to Question 1A of the Summons, therefore, is that the trustees should pay the legacy with interest from the 15th of February 1941, that being the date which is mutually agreed, deferring payment of the interest covered by the Moratorium period.

The costs of all parties to this Originating Summons must be taxed as between solicitor and client and paid out of the estate.

Order Accordingly.